

**Department of State  
Division of Publications**

312 8th Avenue North, 8th Floor Tennessee Tower  
Nashville, TN 37243  
Phone: 615-741-2650  
Fax: 615-741-5133  
Email: sos.information@state.tn.us

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Sequence Number: \_\_\_\_\_  
Rule ID(s): \_\_\_\_\_  
File Date: \_\_\_\_\_  
Effective Date: \_\_\_\_\_

## Emergency or Public Necessity Rule(s) Filing Form

*Emergency and Public Necessity rules are effective from date of filing for a period of up to 165 days.*

<b>Agency/Board/Commission:</b>	Department of Commerce and Insurance
<b>Division:</b>	Fire Prevention
<b>Contact Person:</b>	Randy Safer
<b>Address:</b>	500 James Robertson Parkway Davy Crockett Tower 3 <sup>rd</sup> Floor Nashville, Tennessee
<b>Zip:</b>	37243
<b>Phone:</b>	(615) 741-7190
<b>Email:</b>	randy.shafer@state.tn.us

**Rule Type :**

☒ Emergency Rule  
☐ Public Necessity Rule

**Revision Type (check all that apply):**

☒ Amendment  
☐ New  
☐ Repeal

**Statement of Necessity:**

Pursuant to T.C.A §§ 4-5-208 and 68-102-113, I am promulgating emergency rules amending the building and fire codes and standards by which construction plans and specifications are reviewed by the Department of Commerce and Insurance's Division of Fire Prevention. Tenn. Code Ann. § 4-5-208 provides that an agency may adopt an emergency rule if the agency finds that an immediate danger to the public health, safety or welfare exists and the nature of the danger is such that any other form of rulemaking would not adequately protect the public. The statute provides that an emergency rule may only be effective for a period of not longer than one hundred and sixty-five (165) days. The statute further provides that an agency shall not adopt the same emergency rule within one (1) calendar year from its adoption, unless the agency clearly establishes that it could not reasonably be foreseen during the initial one hundred and sixty-five day (165) period that such an emergency would continue or would likely recur during the next nine (9) months.

Emergency rules are necessary to protect the safety of buildings, both public and private, that are currently under construction. Due to a procedural deficiency, rulemaking hearing rules setting forth new building and fire standards were withdrawn on December 28, 2007. In response to this situation, the Department of Commerce and Insurance's Division of Fire Prevention filed emergency rules on January 25, 2008 which expire July 8, 2008. The withdrawal of rulemaking hearing rules created a safety hazard because the withdrawal of the rulemaking hearing rules, less than 60 days before their effective date, created an uncertainty as to whether plans drawn relying on the withdrawn rules can be reviewed for statutory compliance under the pending codes by the Division of Fire Prevention. This uncertainty will interfere with the plans review and construction of both public and private buildings, resulting in costly delays for private citizens, as well as for the state and local governments. It is also possible that this uncertainty will result in a failure to submit plans for review and buildings will not comply with any minimum standards, thus endangering the public.

The Department of Commerce and Insurance's Division of Fire Prevention properly filed a notice of rulemaking hearing to adopt an updated building code on January 25, 2008 which was published in the February 2008 issue of the Tennessee Administrative Register in accordance with the provisions of Tenn. Code Ann. § 4-5-203. A

public hearing was held March 19, 2008. The rulemaking hearing rules were filed with the Secretary of State on June 19 and they will become effective September 1, 2008.

Because of the great public interest in the adoption of an updated fire code and my desire to make sure the proposed standard provided the greatest safety to the citizens of Tennessee, the Department of Commerce and Insurance's Division of Fire Prevention held a pre-notice hearing on the adoption of a new fire code on March 25, 2008. The Department of Commerce and Insurance's Division of Fire Prevention properly filed a notice of rulemaking hearing on May 30, 2008. A public hearing will be held July 30, 2008.

The current emergency rules expire prior to the effective date of the permanent rules adopting an updated building code and prior to the promulgation of a new fire code creating an uncertainty as to whether plans drawn relying on the withdrawn rules and the expiring emergency rules can be reviewed for statutory compliance under the pending codes by the Division of Fire Prevention. The Department attempted to promulgate permanent rules to become effective prior to the expiration of the emergency rules; however, the great level of interest in these proposed standards which resulted in the extended period of time to promulgate permanent rules could not have been reasonably foreseen by the agency when it withdrew its rulemaking hearing rules and adopted emergency rules, and the agency is unable to deal with such an extended period of lapse in a manner that will protect the health, safety and welfare of the public.

I find that, given these findings, there is an emergency creating a danger to the public welfare such that the use of any other form of rulemaking authorized by the Administrative Procedures Act would not adequately protect the public.

For a copy of this notice of rulemaking hearing, contact Randy Safer, Director of Codes Enforcement for the State Fire Marshal's Office, Department of Commerce and Insurance at 500 James Robertson Parkway, Davy Crockett Tower, 3<sup>rd</sup> Floor, Nashville, Tennessee 37243, telephone (615) 741-7190.

Leslie A. Newman  
Commissioner and State Fire Marshal  
Tennessee Department of Commerce and Insurance

**Rule(s) Revised** (for additional chapters, copy and paste table)

<b>Chapter Number</b>	<b>Chapter Title</b>
0780-02-02	Codes and Standards
<b>Rule Number</b>	<b>Rule Title</b>
0780-02-02-.01	Adoption by Reference

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

Chapter 0780-02-02  
Codes and Standards

## Amendments

Paragraph (1) of rule 0780-02-02-.01 Adoption by Reference is amended by adding the text of subparagraphs (c) and (d) so that, as amended, the paragraph shall read:

- (c) Except for Chapter 11 pertaining to accessibility standards, ICC International Building Code, 2006 edition, including ICC International Mechanical Code, 2006 edition, published by the International Code Council, Inc., 500 New Jersey Avenue Northwest, 6<sup>th</sup> Floor, Washington, D.C. 20001.
- (d) ICC International Fire Code, 2006 edition, published by the International Code Council, Inc., 500 New Jersey Avenue Northwest, 6th Floor, Washington, D.C. 20001, and the Life Safety Code (NFPA No. 101-2006), 2006 edition, published by the National Fire Protection Association, 1 Batterymarch Park, Quincy, Massachusetts 02269-9101.

Authority: T. C. A. §§68-120-101(a) and (e), and 68-102-113(a).

\* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
n/a					

I certify that this is an accurate and complete copy of emergency or public necessity rules, lawfully promulgated and adopted.

Date: 07/02/08

Signature: \_\_\_\_\_

Name of Officer: Leslie A. Newman

Title of Officer: Commissioner of Commerce and Insurance

Subscribed and sworn to before me on: \_\_\_\_\_

Notary Public Signature: \_\_\_\_\_

My commission expires on: \_\_\_\_\_

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All emergency or public necessity rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

\_\_\_\_\_  
Robert E. Cooper, Jr.  
Attorney General

\_\_\_\_\_  
Date

#### Department of State Use Only

Filed with the Department of State on: \_\_\_\_\_

Effective for: \_\_\_\_\_ *\*days*

Effective through: \_\_\_\_\_

*\* Temporary rules may be effective for up to 165 days from the date of filing.*

\_\_\_\_\_  
Riley C. Darnell  
Secretary of State

### **Additional Information Required**

All agencies, upon filing a rule, must also submit the following pursuant to TCA 4-5-226(i)(1).

- (A)** A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;
- (B)** A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;
- (C)** Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;
- (D)** Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;
- (E)** An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;
- (F)** Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;
- (G)** Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;
- (H)** Office address and telephone number of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and
- (I)** Any additional information relevant to the rule proposed for continuation that the committee requests.